

## Office of the Secretary, USDA

## § 25.1

the Board or otherwise indicates an intention not to continue the prosecution of defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action.

### *Rule 32. Remand From Court*

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and tie limitations permit, such orders shall conform to these rules.

### *Rule 33. Sanctions*

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

### *Rule 34. Alternative Dispute Resolution*

Upon joint motion or with the consent of both parties, the Board may permit the use of methods of Alternative Dispute Resolution (ADR). The Board shall notify parties of the availability of ADR methods by transmitting information with its notice of docking (Rule 3).

### *Rule 35. Application for Attorneys' Fees and Expenses Under the Equal Access to Justice Act*

The Equal Access to Justice Act (EAJA), 5 U.S.C. 504, allows payment of attorneys' fees and expenses to certain prevailing parties in administrative adjudications with the Government unless the Government's position was substantially justified. Rules governing applications for fees and expenses under EAJA can be found in 7 CFR 1.180 *et seq.*

## PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

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AUTHORITY: 5 U.S.C. 301, 26 U.S.C. 1391.

SOURCE: 63 FR 19114, Apr. 16, 1998, unless otherwise noted.

### Subpart A—General Provisions

#### § 25.1 Applicability and scope.

(a) *Applicability.* This part sets forth policies and procedures applicable to rural Empowerment Zones and Enterprise Communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C,

part I (Round I) and the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II).

(b) *Scope*. This part contains provisions relating to area requirements, the nomination process for rural Empowerment Zones and rural Enterprise Communities, and the designation of these Zones and Communities by the Secretary of the U.S. Department of Agriculture (Secretary) (USDA). Provisions dealing with the nominations and designation of urban Empowerment Zones and Enterprise Communities are promulgated by the U.S. Department of Housing and Urban Development (HUD). This part also contains provisions relating to granting certain nominated areas status as Champion communities.

#### § 25.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in rural areas in order to facilitate the empowerment of the disadvantaged and long-term unemployed such that they may become economically self-sufficient, and to promote revitalization of economically distressed areas, primarily by facilitating:

(a) Coordination of economic, human services, health, transportation, education, community, and physical development plans, and other plans and related activities at the local level;

(b) Local partnerships fully involving affected communities and local institutions and organizations in developing and implementing a comprehensive multi-sectoral strategic plan for any nominated rural Empowerment Zone or Enterprise Community;

(c) Tax incentives and credits; and

(d) Distribution of other federal resources including grants from USDA and other federal departments, including Empowerment Zone and Enterprise Community Social Services Block Grant (EZ/EC SSBG) funds as may be available from the U.S. Department of Health and Human Services (HHS).

#### § 25.3 Definitions.

As used in this part—

*Annual report* means the report submitted to USDA by all rural Empower-

ment Zones and Enterprise Communities pursuant to § 25.400.

*Applicant* means the entity that is submitting the community's strategic plan for accomplishing comprehensive economic, human community, and physical development within the area; such an entity may include, but is not limited to, State governments, local governments, tribal governments, regional planning agencies, non-profit organizations, community-based organizations, or a partnership of community members and other entities. The applicant may be the same as or different from the lead managing entity.

*Baseline condition* means a measurable condition or problem at the time of designation for which benchmark goals have been established for improvement.

*Benchmark activity* means a program, project, task or combination thereof which is designed to achieve a benchmark goal.

*Benchmark goal* means a measurable goal targeted for achievement in the strategic plan.

*Census tract* means a population census tract, or, if census tracts are not defined for the area, a block numbering area (BNA) as established by the Bureau of the Census, U.S. Department of Commerce. BNAs are areas delineated by state officials or (lacking state participation) by the Census Bureau, following Census Bureau guidelines, for the purpose of grouping and numbering decennial census blocks in counties or statistically equivalent entities in which census tracts have not been established. A BNA is equivalent to a census tract in the Census Bureau's geographic hierarchy.

*Brownfield* means a "qualified contaminated site" meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

*Champion Community* means a rural area granted such status by the Secretary pursuant to this part from among those communities which applied for designation as either a rural Empowerment Zone or Enterprise Community and which were not so designated.

*Designation* means the process by which the Secretary designates rural areas as Empowerment Zones or Enterprise Communities eligible for tax incentives and credits established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*), and for certain consideration by Federal programs such as the EZ/EC SSBG program established pursuant to section 2007 of title XX of the Social Security Act (42 U.S.C. 1397f).

*Designation date* means December 21, 1994 in the case of Round I designations and, in the case of Round II designations, the date designation is made by the Secretary.

*Developable site* means a parcel of land in a nominated area which may be developed for commercial or industrial purposes.

*Empowerment Zone* means a rural area so designated by the Secretary pursuant to this part.

*Enterprise Community* means a rural area so designated by the Secretary pursuant to this part.

*EZ/EC SSBG funds* or *EZ/EC Social Services Block Grant funds* means any funds that may be provided to states or tribal governments by HHS in accordance with section 2007(a) of the Social Security Act (42 U.S.C. 1397f), for use by designated Empowerment Zones or Enterprise Communities.

*HHS* means the U.S. Department of Health and Human Services.

*HUD* means the U.S. Department of Housing and Urban Development.

*Indian reservation* means a reservation as defined in section 168(j)(6) of the Internal Revenue Code, 26 U.S.C. 168(j)(6).

*Lead managing entity* means the entity that will administer and be responsible for the implementation of the strategic plan.

*Local government* means any county, city, town, township, parish, village, or other general purpose political subdivision of a state, and any combination of these political subdivisions that is recognized by the Secretary.

*Nominated area* means an area which is nominated by one or more local governments and the state or states in which it is located for designation in accordance with this part.

*Outmigration* means the negative percentage change reported by the Bureau of the Census, U.S. Department of Commerce, for the sum of:

(1) Net Domestic Migration;

(2) Net Federal Movement; and

(3) Net International Migration, as such terms are defined for purposes of the 1990 Census.

*Poverty rate* means, for a given Census tract, the poverty rate reported in Table 19 of the Bureau of the Census CPH-3 series of publications from the 1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas.

*Revocation of designation* means the process by which the Secretary may revoke the designation of an area as an Empowerment Zone or Enterprise Community pursuant to § 25.405.

*Round I* identifies designations of rural Empowerment Zones and Enterprise Communities pursuant to subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66).

*Round II* identifies designations of rural Empowerment Zones pursuant to subtitle F (Empowerment Zones, Enterprise Communities, Brownfields, and Community Development Financial Institutions) of Title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105-34).

*Rural area* means any area defined pursuant to § 25.503.

*Secretary* means the Secretary of the U.S. Department of Agriculture.

*State* means any state in the United States.

*Strategic plan* means a plan for achieving benchmark goals evidencing improvement over identified baseline conditions, developed with the participation and commitment of local governments, tribal governments, state governments, private sector, community members and others, pursuant to the provisions of § 25.202.

*USDA* means the U.S. Department of Agriculture.

#### **§ 25.4 Secretarial review and designation.**

(a) *Designation.* The Secretary will review applications for the designation of

nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural Empowerment Zones and Enterprise Communities as are made shall be from the applications submitted in response to the applicable Notice Inviting Applications. The Secretary may elect to designate as Champion communities, those nominated areas which are not designated as either a rural Empowerment Zone or Enterprise Community and whose applications meet the criteria contained in § 25.301.

(b) *Number of rural empowerment zones, enterprise communities and champion communities*—(1) *Round I.* The Secretary may designate up to three rural Empowerment Zones and up to thirty rural Enterprise Communities prior to December 31, 1996.

(2) *Round II.* The Secretary may, prior to January 1, 1999, designate up to five rural Empowerment Zones in addition to those designated in Round I. The number of Champion Communities is limited to the number of applicants which are not designated.

(c) *Period of designation.* The designation of a rural area as an Empowerment Zone or Enterprise Community shall remain in effect during the period beginning on the designation date and ending on the earliest of the:

(1) End of the tenth calendar year beginning on or after the designation date;

(2) Termination date designated by the state and local governments in their application for nomination;

(3) Date the Secretary revokes the designation; or

(4) Date the Empowerment Zone or Enterprise Community modifies its boundary without first obtaining the written approval of the Secretary.

#### § 25.5 Waivers.

The Secretary may waive any provision of this part in any particular case for good cause, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

#### §§ 25.6–25.99 [Reserved]

### Subpart B—Area Requirements

#### § 25.100 Eligibility requirements.

A nominated rural area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population of 30,000;

(b) Is one of pervasive poverty, unemployment, and general distress, as described in § 25.102;

(c) Meets the area size and boundary requirements of § 25.103;

(d) Is located entirely within the jurisdiction of the general local government making the nomination; and

(e) Meets the poverty rate criteria contained in § 25.104.

(f) *Provision for Alaska and Hawaii.* A nominated area in Alaska or Hawaii shall be presumed to meet the criteria of paragraphs (b), (c), and (e) of this section if, for each Census tract or block group in the area, at least 20 percent of the families in such tract have an income which is 50 percent or less of the statewide median family income.

#### § 25.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to this part shall be based on the 1990 Census, and from information published by the Bureau of Census and the Bureau of Labor Statistics, provided, however, that for purposes of demonstrating outmigration pursuant to § 25.104(b)(2)(iii), data from the 1980 Census and interim data collected by the Bureau of Census for the 1990–1994 period may be used. The data shall be comparable in point or period of time and methodology employed.

(b) *Use of statistics on boundaries.* The boundary of a rural area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of Census tracts, or, where tracts are not defined, with block numbering areas, except:

(1) Nominated areas in Alaska and Hawaii shall coincide with the boundaries of census tracts or block groups

as such term is used for purposes of the 1990 Census;

(2) Developable sites are not required to coincide with the boundaries of Census tracts; and

(3) Nominated areas wholly within an Indian reservation are not required to adhere to census tract boundaries if sufficient credible data are available to show compliance with other requirements of this part. The requirements of § 25.103 are otherwise applicable.

[63 FR 19114, Apr. 16, 1998, as amended at 63 FR 53780, Oct. 7, 1998]

**§ 25.102 Pervasive poverty, unemployment and general distress.**

(a) *Pervasive poverty.* Conditions of poverty must be reasonably distributed throughout the entire nominated area. The degree of poverty shall be demonstrated by citing available statistics on low-income population, levels of public assistance, numbers of persons or families in poverty or similar data.

(b) *Unemployment.* The degree of unemployment shall be demonstrated by the provision of information on the number of persons unemployed, underemployed (those with only a seasonal or part-time job) or discouraged workers (those capable of working but who have dropped out of the labor market—hence are not counted as unemployed), increase in unemployment rate, job loss, plant or military base closing, or other relevant unemployment indicators having a direct effect on the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, per capita property tax base, average years of school completed; outmigration and population decline, a high or rising incidence of crime, narcotics use, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidents of domestic violence, incidence of certain health conditions and illiteracy are examples of appropriate indicators of general distress. The data and methods used to produce such indicators that are used to describe general distress must all be stated.

**§ 25.103 Area size and boundary requirements**

(a) General eligibility requirements. A nominated area:

(1) May not exceed one thousand square miles in total land area;

(2) Must have one continuous boundary if located in more than one State or may consist of not more than three noncontiguous parcels if located in only one State;

(3) If located in more than one State, must be located within no more than three contiguous States;

(4) May not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each Census tract in such district is not less than 35 percent for an Empowerment Zone (30 percent in the case of an Enterprise Community);

(5) Subject to paragraph (b)(4) of this section, may not include any portion of an area already included in an Empowerment Zone or Enterprise Community or included in an area otherwise nominated to be designated under this section;

(b) Eligibility requirements specific to different rounds.

(1) For purposes of Round I designations only, a nominated area may not include any area within an Indian reservation;

(2) For purposes of applying paragraph (a)(1) of this section to Round II designations:

(i) A Census tract larger than 1,000 square miles shall be reduced to a 1,000 square mile area with a continuous boundary, if necessary, after application of §§ 25.103(b)(2) (ii) and (iii);

(ii) Land owned by the Federal, State or local government may (and in the event the Census tract exceeds 1,000 square miles, will) be excluded in determining the square mileage of a nominated area; and

(iii) Developable sites, in the aggregate not exceeding 2,000 acres, may (and in the event the Census tract exceeds 1,000 square miles, will) be excluded in determining the square mileage of the nominated area;

(3) For purposes of applying paragraph (a)(2) of this section to Round II designations, the following shall not be treated as violating the continuous

boundary requirement nor the limit on the number of noncontiguous parcels:

- (i) Exclusion of excess area pursuant to paragraph (b)(2)(i) of this section;
- (ii) Exclusion of government owned land pursuant to paragraph (b)(2)(ii) of this section; or
- (iii) Exclusion of developable sites pursuant to paragraph (b)(2)(iii) of this section; and

(4) Paragraph (a)(5) of this section shall not apply where a Round I Enterprise Community is applying either in its entirety or together with an additional area for a Round II Empowerment Zone designation.

[63 FR 19114, Apr. 16, 1998, as amended at 63 FR 53780, Oct. 7, 1998]

#### § 25.104 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following poverty rate criteria specific to Round I and Round II nominated areas:

(1) *Round I*—(i) In each Census tract, the poverty rate may not be less than 20 percent;

(ii) For at least 90 percent of the Census tracts within the nominated area, the poverty rate may not be less than 25 percent; and

(iii) For at least 50 percent of the Census tracts within the nominated area, the poverty rate may not be less than 35 percent.

(2) *Round II*—(i) In each Census tract, the poverty rate may not be less than 20 percent;

(ii) For at least 90 percent of the Census tracts within the nominated area, the poverty rate may not be less than 25 percent;

(iii) Up to three noncontiguous developable sites, in the aggregate not exceeding 2,000 acres, may be excluded in determining whether the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section are met; and

(iv) The Secretary may designate not more than one rural Empowerment Zone without regard to paragraphs (a)(2)(i) and (a)(2)(ii) of this section if such nominated area satisfies the emigration criteria specified in paragraph (b)(2)(iii) of this section.

(b) *Special rules.* The following special rules apply to the determination of

poverty rate for Round I and Round II nominated areas:

(1) *Round I*—(i) *Census tracts with no population.* Census tracts with no population shall be treated as having a poverty rate that meets the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(1)(iii) of this section;

(ii) *Census tracts with populations of less than 2,000.* A Census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of paragraphs (a)(1)(i) and (ii) of this section if more than 75 percent of the tract is zoned for commercial or industrial use;

(iii) *Adjustment of poverty rates for Round I Enterprise Communities.* For Round I Enterprise Communities only, the Secretary may, where necessary to carry out the purposes of this part, apply one of the following alternatives:

(A) Reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the Census tracts (or, if fewer, five Census tracts) in the nominated area:

(1) The 20 percent threshold in paragraph (a)(1)(i) of this section;

(2) The 25 percent threshold in paragraph (a)(1)(ii) of this section;

(3) The 35 percent threshold in paragraph (a)(1)(iii) of this section; or

(B) Reduce the 35 percent threshold in paragraph (a)(1)(iii) of this section by 10 percentage points for three Census tracts.

(2) *Round II*—(i) *Census tracts with no population.* Census tracts with no population shall be treated the same as those Census tracts having a population of less than 2,000;

(ii) *Census tracts with populations of less than 2,000.* A Census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if:

(A) More than 75 percent of such tract is zoned for commercial or industrial use; and

(B) Such tract is contiguous to 1 or more other Census tracts which have a poverty rate of 25 percent or more, where such determination is made without applying § 25.104(b)(2)(ii).

(iii) *Emigration criteria.* For purposes of the discretion as may be exercised by the Secretary pursuant to paragraph (a)(2)(iv) of this section, a nominated area must demonstrate outmigration of not less than 15 percent over the period 1980–1994 for each census tract. The outmigration for each census tract in the nominated area shall be as reported for the county in which the census tract is located: *Provided, however,* That the nominated area may include not more than one census tract where the reported outmigration is less than 15 percent, which tract shall be contiguous to at least one other census tract in the nominated area.

(c) *General rules.* The following general rules apply to the determination of poverty rate for both Round I and Round II nominated areas.

(1) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percentage point or more up to the next highest whole percentage point figure.

(2) *Noncontiguous parcels.* Each such parcel (excluding, in the case of Round II, up to 3 noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria set forth in this section.

(3) *Areas not within census tracts.* In the case of an area which is not tracted for Census tracts, the block numbering area shall be used for purposes of determining poverty rates. Block groups may be used for Alaska and Hawaii.

#### §§ 25.105–25.199 [Reserved]

### Subpart C—Nomination Procedure

#### § 25.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the States in which an area is located must nominate such area for designation as an Empowerment Zone or Enterprise Community. Nominated areas can be considered for designation only if:

(1) The rural area meets the applicable requirements for eligibility identified in § 25.100;

(2) The Secretary determines such governments have the authority to nominate the area for designation and to provide the assurances described in paragraph (b) of this section; and

(3) The Secretary determines all information furnished by the nominating States and local governments is reasonably accurate.

(b) *Required certifications and assurances.* The State and local governments nominating an area for designation must:

(1) Submit the following certifications:

(i) Each nominating governmental entity has the authority to:

(A) Nominate the rural area for designation as an Empowerment Zone or Enterprise Community and make the assurances required under this part;

(B) Make the State and local commitments contained in the strategic plan or otherwise required under this part; and

(C) Provide written assurances satisfactory to the Secretary that these commitments will be met; and

(ii) The nominated area satisfies the eligibility criteria referenced in § 25.100, inclusive of the requirement that either;

(A) No portion of the area nominated is already included in a designated Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section; or

(B) Where an existing Round I Enterprise Community is seeking to be designated as a Round II Empowerment Zone, that the nominated area includes the entirety of the applicable Round I Enterprise Community and that any other areas as may be included in the application do not comprise any portion of a designated Empowerment Zone or Enterprise Community or part of an area otherwise nominated to be designated under this section; and

(2) Provide written assurance that:

(i) The strategic plan will be implemented;

(ii) The nominating governments will make available, or cause to be made available, all information requested by USDA to aid in the evaluation of progress in implementing the strategic plan; and

(iii) EZ/EC SSBG funds, as applicable, will be used to supplement, not supplant, other Federal or non-Federal funds available for financing services or activities which promote the purposes of section 2007 of the Social Security Act.

**§ 25.201 Application.**

No rural area may be considered for designation pursuant to this part unless the application:

(a) Demonstrates that the nominated rural area satisfies the eligibility criteria contained in § 25.100;

(b) Includes a strategic plan, which meets the requirements contained in § 25.202;

(c) Includes the written commitment of the applicant, as applicable, that EZ/EC SSBG funds will be used to supplement, not replace, other Federal and non-Federal funds available for financing services or activities that promote the purposes of section 2007 of the Social Security Act; and

(d) Includes such other information as may be required by USDA.

**§ 25.202 Strategic plan.**

(a) *Principles of strategic plan.* The strategic plan included in the application must be developed in accordance with the following four key principles:

(1) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(2) Community-based partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, local public health and social service departments and nonprofit groups providing similar services, environmental groups, local transportation planning entities, public and private schools, religious organizations, the private and nonprofit sectors, centers of learning, and other community institutions and individual citizens.

(3) Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, job training and other important services such as affordable childcare and transportation services that may enable residents to be employed in jobs that offer upward mobility.

(4) Sustainable community development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community, and human development. These approaches should preserve the environment and historic landmarks—they may include “brownfields” clean-up and redevelopment, and promote transportation, education, and public safety.

(b) *Minimum requirements.* The strategic plan must:

(1) Describe the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area;

(2) Describe the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process;

(3) Identify the amount of State, local, and private resources that will be available in the nominated area and the private and public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities;

(4) Identify the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities, including details about proposed uses of EZ/EC SSBG funds that may be available from HHS;

(5) Identify the baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient;

(6) Must not include any action to assist any establishment in relocating from one area outside the nominated



area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation; and

(7) Include such other information as required by USDA in the Notice Inviting Applications.

(c) *Implementation of strategic plan.* The strategic plan may be implemented by State governments, tribal governments, local governments, regional planning agencies, non-profit organizations, community-based organizations, or other nongovernmental entities. Activities included in the strategic plan may be funded from any source, Federal, State, local, or private, which agrees to provide assistance to the nominated area.

(d) *Public access to materials and proceedings.* The applicant or the lead managing entity, as applicable, must make available to the public copies of the strategic plan and supporting documentation and must conduct its meetings in accordance with the applicable open meetings acts.

#### **§ 25.203 Submission of applications.**

*General.* A separate application for designation as an Empowerment Zone or Enterprise Community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the Notice Inviting Applications as published in the FEDERAL REGISTER, and must contain complete and accurate information.

#### **§ 25.204 Evaluation of the Strategic plan.**

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated rural areas described in subpart D of this part. On the basis of this evaluation, USDA may request additional information pertaining to the plan and the proposed area and may, as part of that request, suggest modifications to the plan, proposed area, or term that would enhance its effectiveness. The effectiveness of the strategic plan will be determined in accordance with the four key principles contained in § 25.202(a). USDA will review each plan submitted in terms of the four equally weighted principal objectives, and of such other elements of these principal objectives as are appropriate to address the opportunities and problems of each nominated area, which may include:

(a) *Strategic vision for change—(1) Goals and coordinated strategy.* The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets; and

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

(b) *Community-based partnerships—(1) Community partners.* The extent to which residents of the community participated in developing the strategic plan and their commitment to implementing it, the extent to which community-based organizations in the nominated area have participated in the development of the nominated

area, and their record of success measured by their achievements and support for undertakings within the nominated area;

(2) *Private and nonprofit organizations as partners.* The extent to which partnership arrangements include commitments from private and nonprofit organizations, including corporations, utilities, banks and other financial institutions, human services organizations, health care providers, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which States and local governments are committed to providing support to the strategic plan, including their commitment to “reinventing” their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the zone or community’s designation.

(c) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship will increase within the zone or community;

(2) The extent to which residents will achieve a real economic stake in the zone or community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic, community and human development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire area and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the zone or community interrelates with the broader regional economies; and

(6) The extent to which lending and investment opportunities will increase within the zone or community through the establishment of mechanisms to encourage community investment and to create new economic growth.

(d) *Sustainable community development*—(1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating localities and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the zone or community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection and the vitality of life of the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner consistent that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted and the extent to which young people will be:

(i) Provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(ii) Invited to take part as resources in the rebuilding of their community; and

(iii) Provided the opportunity to develop a sense of industry and competency and a belief they might exercise some control over the course of their lives.

(7) *Education goals.* The extent to which schools, religious organizations, non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental

skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable housing.* The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug abuse.* The extent to which the plan addresses levels of drug abuse and drug-related activity through the expansion of drug treatment services, drug law enforcement initiatives, and community-based drug abuse education programs;

(10) *Health care.* The extent to which the plan promotes a community-based system of health care that facilitates access to comprehensive, high quality care, particularly for the residents of EZ/EC neighborhoods;

(11) *Equal opportunity.* The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated zone or community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, creed, national origin, gender, handicap or age in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or the forms of compensation, or use of facilities. Applicants must comply with the provisions of Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

#### §§ 25.205—25.299 [Reserved]

### Subpart D—Designation Process

#### § 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures.* USDA will establish a time period and procedure for the submission of applications for designation as Em-

powerment Zones or Enterprise Communities, including submission deadlines and addresses, in a Notice Inviting Applications, to be published in the FEDERAL REGISTER.

(b) *Acceptance for processing.* USDA will accept for processing those applications as Empowerment Zones and Enterprise Communities which USDA determines have met the criteria required under this part. USDA will notify the States and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the Notice Inviting Applications published in the FEDERAL REGISTER. The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the certifications and written assurances required by § 25.200(b).

(c) *Site visits.* In the process of reviewing each application accepted for processing, USDA may undertake site visits to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated rural areas, or period during the application review period.* Subject to the limitations imposed by § 25.100.

(1) USDA may request additional information pertaining to the strategic plan and proposed area and may, as a part of that request, suggest modifications to the strategic plan or nominated area that would enhance the effectiveness of the strategic plan;

(2) Enlargement of a nominated area will not be allowed if the inclusion of the additional area will result in an average poverty rate less than the average poverty rate at the time of initial application; and

(3) An applicant may modify the nominated area or strategic plan during the application review period with USDA approval.

(e) *Designations.* Final determination of the boundaries of areas and the term for which the designations will remain in effect will be made by the Secretary.

**§ 25.301 Selection factors for designation of nominated rural areas.**

In choosing among nominated rural areas eligible for designation as Empowerment Zone, Enterprise Community or Champion Community, the Secretary shall consider:

(a) The potential effectiveness of the strategic plan, in accordance with the key principles in § 25.202(a);

(b) The strength of the assurances made pursuant to § 25.200(b) that the strategic plan will be implemented;

(c) The extent to which an application proposes activities that are creative and innovative;

(d) The extent to which areas consisting of noncontiguous parcels are not so widely separated as to compromise achievement by the nominated area of a cohesive community or regional identity; and

(e) Such other factors as established by the Secretary, which include the degree of need demonstrated by the nominated area for assistance under this part and the diversity within and among the nominated areas. If other factors are established by USDA, a FEDERAL REGISTER Notice will be published identifying such factors, along with an extension of the application due date if necessary.

**§§ 25.302–25.399 [Reserved]****Subpart E—Post-Designation Requirements****§ 25.400 Reporting.**

(a) *Periodic reports.* Empowerment Zones, Enterprise Communities and Champion Communities shall submit to USDA periodic reports which identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones, Enterprise Communities and Champion communities as USDA may request from time to time shall be submitted promptly. On the basis of this information and of on-site reviews, USDA will prepare and issue periodic reports on the effectiveness of the Empowerment Zones/Enterprise Communities Program.

(b) *Annual report.* All rural Empowerment Zones and Enterprise Communities shall submit an annual report to USDA for each calendar year which includes an executive summary and benchmark progress report as follows:

(1) *Executive summary.* The executive summary shall identify the progress and setbacks experienced in efforts to achieve benchmark goals. Activities other than those expressly included in the strategic plan should also be noted in order to provide an understanding of where the community stands with respect to implementation of the strategic plan. Furthermore, the executive summary should address the following:

(i) Identify the most significant accomplishments to date.

(ii) Describe the level of community participation and overall support for the EZ/EC initiative.

(iii) List and describe new partnerships or alliances formed.

(iv) Identify problems or obstacles not otherwise anticipated in the strategic plan.

(v) Describe solutions developed or efforts to address the problems and obstacles.

(vi) Identify practices or concepts which were found especially effective in implementing the strategic plan.

(2) *Benchmark progress report.* For each benchmark goal the community will provide a current measure of the baseline condition which is the subject of targeted improvement and whether the current measure represents an improvement from the baseline condition as initially stated in the strategic plan. For each benchmark activity the community will provide a status report in form and substance acceptable to USDA.

(c) *Timely State data.* Where not prevented by State law, nominating State governments must provide the timely release of data requested by USDA for the purposes of monitoring and assisting the success of Empowerment Zones and Enterprise Communities.

**§ 25.401 Responsibility of lead managing entity.**

(a) *Financial.* The lead managing entity will be responsible for strategic plan program activities and monitoring the fiscal management of the funds of

the Empowerment Zone or Enterprise Community.

(b) *Reporting.* The lead managing entity will be responsible for developing the reports required under this subpart.

(c) *Cooperation.* All entities with significant involvement in implementing the strategic plan shall cooperate with the lead managing entity in its compliance with paragraphs (a) and (b) of this section.

#### **§ 25.402 Periodic performance reviews.**

USDA will regularly evaluate the progress in implementing the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and using other information submitted. USDA may also commission evaluations of the Empowerment Zone program as a whole by an impartial third party. Evidence of continual involvement of all segments of the community, including low income and disadvantaged residents, must be evidenced in the implementation of the strategic plan.

#### **§ 25.403. Ongoing 2-year work plan requirement.**

(a) Each Empowerment Zone and Enterprise Community shall prepare and submit annually, work plans for the subsequent 2-year interval of the designation period.

(b) The 2-year work plan shall be submitted to USDA 45 days prior to the start of the applicable 2-year period.

(c) The 2-year work plan must include the following sections and content:

(1) *Section 1—Work Plan.* Identify the benchmark goals to be achieved in the applicable 2 years of the strategic plan, together with the benchmark activities to be undertaken during the applicable 2 years of implementation. Include references to the applicable baseline conditions and performance indicators to be used in assessing performance.

(2) *Section 2—Operational Budget.* For each benchmark activity to be undertaken in the applicable 2 years of the strategic plan, set forth the following information:

(i) Expected implementation costs;

(ii) Proposed sources of funding and whether actual commitments have been obtained;

(iii) Technical assistance resources and other forms of support pledged by Federal, State and local governments, non-profit organizations, foundations, private businesses, and any other entity to assist in implementation of the community's strategic plan, and whether this support is conditional upon the designation of the community as an Empowerment Zone; and

(iv) Documentation of applications for assistance and commitments identified as proposed funding and other resources.

#### **§ 25.404 Validation of designation.**

(a) *Reevaluation of designations.* On the basis of the performance reviews described in § 25.402, and subject to the provisions relating to the revocation of designation appearing at § 25.405, USDA will make findings as to the continuing eligibility for and the validity of the designation of any Empowerment Zone, Enterprise Community, or Champion Community.

(b) *Modification of designation.* Based on a rural zone or community's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation in accordance with § 25.405 and the requirements as to the number, maximum population and other characteristics of rural Empowerment Zones referenced in § 25.100, the Secretary may modify designations by reclassifying rural Empowerment Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

#### **§ 25.405 Revocation of designation.**

(a) *Basis for revocation.* The Secretary may revoke the designation of a rural area as an Empowerment Zone or Enterprise Community, or withdraw status as a Champion Community, if the Secretary determines, on the basis of the periodic monitoring and assessments described in § 25.402, that the applicant, lead managing entity, or the States or local governments in which the rural area is located have:

(1) Modified the boundaries of the area without written approval from USDA;

(2) Failed to make progress in implementing the strategic plan; or

(3) Not complied substantially with the strategic plan (which may include failing to apply funds as contained in the strategic plan without advance written approval from USDA).

(b) *Letter of Warning.* Before revoking the designation of a rural area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the applicant, the lead managing entity (if different from the applicant) and the nominating States and local governments, with a copy to all affected Federal agencies of which USDA is aware:

(1) Advising that the Secretary has determined that the applicant and/or lead managing entity and/or the nominating local governments and State:

(i) Have modified the boundaries of the area without written approval from USDA; or

(ii) Are not complying substantially with, or have failed to make satisfactory progress in implementing the strategic plan; and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* To revoke the designation, the Secretary must issue a final notice of revocation of the designation of the rural area as an Empowerment Zone or Enterprise Community, after:

(1) Allowing 90 days from the date of receipt of the letter of warning for response; and

(2) Making a determination pursuant to paragraph (a) of this section.

(d) *Notice to affected Federal agencies.* USDA will notify all affected Federal agencies of which it is aware of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to §25.404(b).

(e) *Effective date.* The final notice of revocation of designation will be published in the FEDERAL REGISTER, and the revocation will be effective on the date of publication.

**§§ 25.406–25.499 [Reserved]**

**Subpart F—Special Rules**

**§ 25.500 Indian reservations.**

(a) An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body.

(b) For purposes of paragraph (a) of this section, a reservation governing body must be the governing body of an Indian entity recognized and eligible to receive services from the United States Bureau of Indian Affairs, U.S. Department of Interior.

(c) Where two or more governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination.

**§ 25.501 Governments.**

If more than one State or local government seeks to nominate an area under this part, any reference to or requirement of this part shall apply to all such governments.

**§ 25.502 Nominations by state-chartered economic development corporations.**

Any rural area nominated by an economic development corporation chartered by a State and qualified to do business in the State in which it is located shall be treated as nominated by a State and local government.

**§ 25.503 Rural areas.**

(a) *What constitutes “rural”.* A rural area may consist of any area that lies outside the boundaries of a Metropolitan Area, as designated by the Office of Management and Budget, or, is an area that has a population density less than or equal to 1,000 persons per square mile, the land use of which is primarily agricultural.

(b) *Exceptions to the definition.* On a case by case basis, the Secretary may grant requests for waiver from the definition of “rural” stated in paragraph (a) of this section upon a showing of

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good cause. Applicants seeking to apply for a rural designation who do not satisfy the definition in paragraph (a) of this section must submit a request for waiver in writing to the Deputy Administrator, USDA Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW., Washington, DC 20024–3202. Requests must include:

(1) The name, address and daytime phone number of the contact person for the applicant seeking the waiver; and

(2) Sufficient information regarding the area that would support the infrequent exception from the definition.

(c) *Waiver process.* The Secretary, in consultation with the Department of Commerce, will have discretion to permit rural applications for communities that do not meet the above rural criteria.

§§ 25.504–25.999 [Reserved]

PART 26 [RESERVED]